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PERMANENT EXTENSION OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

FEBRUARY 14, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 831]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 831) to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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99–006

The amendment is as follows:

Strike section 4 of the bill and insert the following new section:

SEC. 4. PHASEOUT OF EARNED INCOME CREDIT FOR INDIVIDUALS HAVING MORE THAN $2,500 OF TAXABLE INTEREST AND DIVIDENDS.

(a) IN GENERAL.—Section 32 of the Internal Revenue Code of 1986 is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

"(i) PHASEOUT OF CREDIT FOR INDIVIDUALS HAVING MORE THAN $2,500 OF TAXABLE INTEREST AND DIVIDENDS.—If the aggregate amount of interest and dividends includible in the gross income of the taxpayer for the taxable year exceeds $2,500, the amount of the credit which would (but for this subsection) be allowed under this section for such taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to such amount of credit as such excess bears to $650."

(b) INFLATION ADJUSTMENT.—Subsection (j) of section 32 of such Code (relating to inflation adjustments), as redesignated by subsection (a), is amended by striking paragraph (2) and by inserting the following new paragraphs:

"(2) INTEREST AND DIVIDEND INCOME LIMITATION.—In the case of a taxable year beginning in a calendar year after 1996, each dollar amount contained in subsection (i) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

"(3) ROUNDING.—If any amount as adjusted under paragraph (1) or (2) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

I. INTRODUCTION

A. Purpose and Summary

H.R. 831, as amended: (1) extends permanently the 25-percent deduction for health insurance costs of self-employed individuals (sec. 1 of the bill); (2) repeals the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission ("FCC") and prohibits nonrecognition of gain on involuntary conversions in certain related-party transactions (secs. 2 and 3 of the bill); and (3) denies the earned income tax credit ("EITC") to individuals who have more than $3,150 of taxable interest and dividend income and phases out the EITC for individuals with more than $2,500 of taxable interest and dividend income (sec. 4 of the bill).

B. Background and Need for Legislation

25-Percent Health Insurance Deduction for the Self-Employed

Under present law, an employer's contribution to a plan providing health coverage for the employee and the employee's spouse and dependents is excludable from the employee's income. No equivalent exclusion applies in the case of self-employed individuals (i.e., sole proprietors and partners in a partnership).

However, prior law provided a deduction for 25 percent of the amount paid for health insurance of a self-employed individual and the individual's spouse and dependents. The 25-percent deduction was also available to more than 2-percent shareholders of S corporations. The 25-percent deduction was originally enacted on a temporary basis in the Tax Reform Act of 1986. The provision has been extended several times, but expired at the end of 1993.

To provide greater equity between employees and self-employed individuals, the bill extends permanently the 25-percent deduction for health insurance costs of self-employed individuals from its prior expiration.

Nonrecognition of Gain in FCC-Certified Sales and Exchanges

Code section 1071 was originally enacted in 1943 to help the FCC implement a new policy that prohibited licensees from owning more than one radio station per market. Congress believed that the involuntary conversion rules (which generally permitted gain on sales and other dispositions of involuntarily converted property to be excluded from taxable income if the proceeds were reinvested in property similar to the property involuntarily converted) should be applied to FCC-ordered divestitures, but that the rules needed to be liberalized because the purchase of new radio property was dif-

ficult due to wartime restrictions. Under section 1071, gain from the sale or exchange of broadcast facilities may be deferred in cases where the sale or exchange is certified by the FCC ''to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations. * * *''

In 1978, the FCC announced a policy of promoting minority ownership of broadcast facilities by offering tax certificates to persons who voluntarily sell such facilities to minority individuals or minority-controlled entities. Since that time, the FCC has issued over 300 such tax certificates. Recent press reports regarding the FCC's administration of section 1071, both in terms of the types of properties eligible for tax certificates and the size of the tax benefits granted, raise significant questions about the operation of this provision.

The FCC tax certificate program has been the subject of a number of news reports in the past several years. It was also the subject of hearings on miscellaneous revenue proposals held by the Subcommittee on Select Revenue Measures of the Committee on Ways and Means in September, 1993. On January 17, 1995, Chairman Archer issued a press release putting taxpayers on notice that the Committee would immediately review the operation of section 1071 to explore possible legislative changes to section 1071, including the possibility of repeal. The press release stated that any changes to section 1071 may apply to transactions completed, or certificates issued by the FCC, on or after the date of the announcement.

On Friday, January 27, 1995, the Subcommittee on Oversight held a hearing to examine the operation and administration of section 1071. Specifically, the Subcommittee examined: (1) whether the FCC's 1978 policy was consistent with the underlying intent of section 1071; (2) whether the FCC's administration of section 1071 constituted an impermissible exercise of legislative authority; (3) whether the tax incentive provided in section 1071 was, in fact, fostering minority ownership of broadcast facilities; and (4) whether the FCC policy was a necessary or appropriate means of achieving this goal.

Testimony provided at the Oversight Subcommittee's hearing on this provision revealed significant problems in the operation and administration of Code section 1071 by the FCC. For example, the FCC's standards for qualification for the tax certificate program are so vague that the provision is subject to significant abuse. In addition, the FCC's expansion of the types of transactions which qualify for tax certificates was clearly inconsistent with the underlying intent of section 1071—to address the inability of owners who were required by the FCC to divest radio properties to buy replacement property during World War II. Moreover, the cost to taxpayers of the FCC's tax certificate program has never been subject to any systematic review.

In the course of its examination of section 1071, the Committee also became aware of problems with the operation of Code section 1033. Under interpretations issued by the IRS, taxpayers are able to purchase replacement property from a related party, thereby avoiding the need to buy ''new'' replacement property and, some-

times, effectively resulting in a total tax forgiveness for the transaction.

In response to these and other concerns, the bill repeals the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the FCC and prohibits nonrecognition of gain on involuntary conversions in certain related-party transactions.

Limitations on Earned Income Tax Credit

Under current law, a taxpayer may have relatively low earned income, and therefore may be eligible for the EITC, even though he or she has significant interest and dividend income. President Clinton's fiscal year 1996 budget contains a legislative proposal to deny the EITC to individuals who have more than $2,500 of taxable interest and dividend income.

To address this issue, the bill denies the EITC to individuals who have more than $3,150 of taxable interest and dividend income and phases out the EITC for individuals with more than $2,500 of taxable interest and dividend income.

C. Legislative History

Committee Bill

H.R. 831 was introduced on February 6, 1995, by Messrs. Archer, Matsui, and Thomas and Mrs. Johnson of Connecticut. The bill as introduced contained four provisions: (1) extend permanently the 25-percent deduction for health insurance costs for self-employed individuals; (2) repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the FCC; (3) provide that the nonrecognition of gain on involuntary conversions is not to apply if replacement property is acquired from a related person; and (4) deny the EITC for individuals having more than $2,500 of taxable interest and dividend income.

The Committee on Ways and Means marked up the bill on February 8, 1995, and approved by voice vote one amendment by Chairman Archer that denies the EITC to individuals who have more than $3,150 of taxable interest and dividend income and phases out the EITC for individuals with more than $2,500 of taxable interest and dividend income.

Legislative Hearings

The Subcommittee on Health of the Committee on Ways and Means held a public hearing on January 27, 1995, on the deduction for health insurance costs of self-employed individuals. The Subcommittee on Oversight of the Committee on Ways and Means held a public hearing on January 27, 1995, on the tax provisions relating to the nonrecognition of gain on the sale or exchange of certain broadcast property (FCC tax certificate program).[1]

Further, the Committee on Ways and Means held public hearings on the Administration's fiscal year 1996 revenue and budget proposals, beginning on February 7, 1995. One of the Administra-

[1] The FCC tax certificate program was also the subject of hearings on miscellaneous revenue proposals held by the Subcommittee on Select Revenue Measures of the Committee on Ways and Means held on September 8, 21, and 23, 1993. See, Joint Committee on Taxation, "*Description of Miscellaneous Revenue Proposals*" (JCS–12–93), September 16, 1993, p. 71.

tion's revenue proposals is to deny the EITC for individuals having more than $2,500 of taxable interest and dividend income.

Notices of Committee Action

On January 17, 1995, Chairman Archer issued a release announcing that the Committee would immediately review the operation of section 1071 to explore possible legislative changes to section 1071, including the possibility of repeal. The announcement stated that any changes to section 1071 may apply to transactions completed, or certificates issued by the FCC, on or after the date of the announcement. On January 18, 1995, Chairman Johnson of the Subcommittee on Oversight of the Committee on Ways and Means announced a Subcommittee hearing to examine the operation and administration of Code section 1071. The hearing was scheduled for January 27, 1995.

On January 23, 1995, Chairman Thomas of the Subcommittee on Health of the Committee on Ways and Means issued a release announcing a Subcommittee hearing on allowing self-employed individuals to deduct a portion of their health insurance premiums. The hearing was scheduled for January 27, 1995.

On January 30, 1995, Chairman Archer issued a release announcing full Committee hearings on President Clinton's fiscal year 1996 budget proposals under the jurisdiction of the Committee. The hearings were scheduled to begin on February 7, 1995.

II. EXPLANATION OF THE BILL

A. Permanently Extend Deduction for Health Insurance Costs of Self-Employed Individuals (sec. 1 of the bill and sec. 162(l) of the Code)

Present Law

Under present law, the tax treatment of health insurance expenses depends on whether the taxpayer is an employee and whether the taxpayer is covered under a health plan paid for by the employee's employer. An employer's contribution to a plan providing accident or health coverage for the employee and the employee's spouse and dependents is excludable from an employee's income. The exclusion is generally available in the case of owners of a business who are also employees.

In the case of self-employed individuals (i.e., sole proprietors or partners in a partnership) no equivalent exclusion applies. However, prior law provided a deduction for 25 percent of the amount paid for health insurance for a self-employed individual and the individual's spouse and dependents. The 25-percent deduction was not available for any month if the taxpayer was eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse. In addition, no deduction was available to the extent that the deduction exceeded the taxpayer's earned income. The amount of expenses paid for health insurance in excess of the deductible amount could be taken into account in determining whether the individual was entitled to an itemized deduction for medical expenses. The 25-percent deduction expired for taxable years beginning after December 31, 1993.

For purposes of these rules, more than 2-percent shareholders of S corporations are treated the same as self-employed individuals. Thus, they were entitled to the 25-percent deduction.

Other individuals who purchase their own health insurance (e.g., someone whose employer does not provide health insurance) can deduct their insurance premiums only to the extent that the premiums, when combined with other unreimbursed medical expenses, exceed 7.5 percent of adjusted gross income.

Reasons for Change

The 25-percent deduction for health insurance costs of self-employed individuals was added by the Tax Reform Act of 1986 to reduce the disparity between the tax treatment of owners of incorporated and unincorporated businesses (e.g., partnerships and sole proprietorships). The provision was enacted on a temporary basis, and has been extended several times since enactment.

The Committee believes it is appropriate to continue to reduce the disparity between the tax treatment of health insurance ex-

penses of owners of incorporated and unincorporated businesses. Further, the Committee believes that the pattern of allowing the deduction to expire and then extending it creates unneeded uncertainty for taxpayers. Thus, the Committee believes the 25-percent deduction should be made permanent.

Explanation of Provision

The bill retroactively reinstates for 1994 the deduction for 25-percent of health insurance costs of self-employed individuals and extends the 25-percent deduction permanently.

Effective Date

The provision is effective for taxable years beginning after December 31, 1993.

B. Repeal Special Rules Applicable to FCC-Certified Sales of Broadcast Properties; Prohibit Nonrecognition of Gain on Involuntary Conversions in Certain Related-Party Transactions (secs. 2 and 3 of the bill and secs. 1071 and 1033 of the Code)

Background

Legislative Background of Code Section 1071

Code section 1071 was originally enacted as part of the Revenue Act of 1943 to help the FCC implement a new policy that prohibited licensees from owning more than one radio station per market.[2] Congress believed that the involuntary conversion[3] rules (which generally permitted gain on sales of other dispositions of involuntarily converted property to be excluded from taxable income if the proceeds were reinvested in property similar to the property involuntarily converted) should be applied to these transactions, but needed to be liberalized for sales ordered by the FCC because, "[d]ue to wartime restrictions, the purchase of new radio property [would have been] * * * difficult."[4]

As initially reported by the Senate Committee on Finance in 1943, the provision would have allowed a rollover where the sale or exchange of the property was *required* by the FCC as a condition of the granting of an application.[5] However, the conference report stated that because "the Commission does not order or require any particular sale or exchange, it has been deemed more appropriate to provide that the election, subject to other conditions imposed, shall be available upon certification by the Commission that the sale or exchange is necessary or appropriate to effectuate the policies of the Commission with respect to ownership or control of radio broadcasting stations."[6]

In 1954, this provision was adopted as section 1071 of the 1954 Code without change. In adopting the provision, Congress noted

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[2] Revenue Act of 1943, Pub. L. 78–235, sec. 123.

[3] An involuntary conversion is generally defined by the Code to occur only when property is compulsorily or involuntarily converted as a result of its destruction, in whole or in part, by theft, seizure, or requisition or condemnation or threat or imminence thereof. Code sec. 1033(a).

[4] S. Rept. No. 627, 78th Cong., 1st Sess., 23 (1943).

[5] S. Rept. No. 627, 78th Cong., 1st Sess., 23, 53–54 (1943).

[6] H. Rept. No. 1079, 78th Cong., 2d Sess., 49–50 (1943).

that the term "radio broadcasting" has an "established meaning in the industry and in the administration of the Federal Communications Act which is sufficiently comprehensive to include telecasting [i.e., television]."[7]

In 1958, Code section 1071 was amended to provide that the tax certificates should be granted only when the FCC certified that a disposition was necessary or appropriate to effectuate a change in the policy of, or the adoption of a new policy by, the FCC.[8] Congress was concerned that taxpayers had "on occasion purchased additional facilities in excess of the maximum number of facilities permitted under then existing FCC rules, and then obtained a certification from the FCC that the disposition of the older facility was necessary or appropriate, thereby obtaining tax deferment on the gain from the sale."[9] In response to this practice, the FCC announced that in the future it would grant tax certificates only where the disposition was required because of a change in FCC policy or rules with respect to the ownership and control of broadcast facilities.[10] In adopting the 1958 changes, Congress agreed that "the announced policy of the FCC in the Federal Register is a desirable way of eliminating these voluntary transactions from the application of Code section 1071."[11]

The term "radio broadcasting" was expanded to include cable television in 1973.[12] The use of FCC tax certificates was recently expanded in connection with the auction of personal communications services (see discussion below).

FCC Administration of Tax Certificate Program

FCC tax certificate program

Multiple ownership policy

The FCC originally adopted multiple ownership rules in the early 1940s.[13] These rules prohibited broadcast station owners from owning more than one station in the same service area, and, generally, more than six high frequency (radio) or three television stations. Owners wishing to acquire additional stations had to divest themselves of stations they already owned in order to remain in compliance with the FCC's rules.

In November 1943, the FCC adopted a rule that prohibited duopolies (ownership of more than one station in the same city).[14] After these rules were adopted, owners wishing to acquire additional stations in excess of the national ownership limit had to divest themselves of stations they already owned in order to remain in compliance with the FCC's rules. After Code section 1071 was adopted in 1943, in some cases, parties petitioned the FCC for tax certificates pursuant to Code section 1071 when divesting themselves of stations. These divestitures were labeled "voluntary

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[7] S. Rept. No. 1622, 83rd Cong. 2d Sess., 429 (1954).
[8] Technical Amendment Act of 1958, Pub. L. 85–866, sec. 52.
[9] S. Rept. No. 1983, 85th Cong., 2d Sess., 73–74 (1957).
[10] FCC Policy for Tax Certificates, 21 Fed. Reg. 7831 (Oct. 13, 1956).
[11] H. Rept. No. 775, 85th Cong., 1st Sess., 29–30 (1957).
[12] Rev. Rul. 73-73, 1973–1 C.B. 371.
[13] 5 Fed. Reg. 2382 (June 26, 1940) (multiple ownership rules for high frequency broadcast stations); 5 Fed. Reg. 2284 (May 6, 1941) (multiple ownership rules for television stations).
[14] 8 Fed. Reg. 16065 (Nov. 23, 1943).

divestitures'' by the FCC. When the duopoly rule was adopted, 35 licensees that held more than one license in a particular city were required by the rule to ''involuntarily'' divest themselves of one of the licenses.[15]

Minority ownership policy

In 1978, the FCC announced a policy of promoting minority ownership of broadcast facilities by offering an FCC tax certificate to those who voluntarily sell such facilities (either in the form of assets or stock) to minority individuals or minority-controlled entities.[16] The FCC's policy was based on the view that minority ownership of broadcast stations would provide a significant means of fostering the inclusion of minority views in programming, thereby serving the needs and interests of the minority community as well as enriching and educating the non-minority audience. The FCC subsequently expanded its policy to include the sale of cable television systems to minorities as well.[17]

''Minorities,'' within the meaning of the FCC's policy, include ''Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.''[18] As a general rule, a minority-controlled corporation is one in which more than 50 percent of the voting stock is held by minorities. A minority-controlled limited partnership is one in which the general partner is a minority or minority-controlled, and minorities have at least a 20-percent interest in the partnership.[19] The FCC requires those who acquire broadcast (or cable) properties with the help of the FCC tax certificate policy to hold those properties for at least one year.[20] An acquisition can qualify even if there is a pre-existing agreement (or option) to buy out the minority interests at the end of the one-year holding period, providing that the transaction is at arm's-length.

In 1982, the FCC further expanded its tax certificate policy for minority ownership. At that time, the FCC decided that, in addition to those who sell properties to minorities, investors who contribute to the stabilization of the capital base of a minority enterprise would be entitled to a tax certificate upon the subsequent sale of their interest in the minority entity.[21] To qualify for an FCC tax certificate in this circumstance, an investor must either (1) provide start-up financing that allows a minority to acquire either broadcast or cable properties, or (2) purchase shares in a minority-controlled entity within the first year after the license necessary to operate the property is issued to the minority. In these situations, the status of the divesting investor and the purchaser of the divested interest is irrelevant, because the goal is to increase the financing opportunities available to minorities.

Since fiscal year 1988, in appropriations legislation, the Congress has prohibited the FCC from using any of its appropriated funds

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[15] FCC Announces New Policy Relating to Issuance of Tax Certificates, 14 FCC2d 827 (1956).
[16] Minority Ownership of Broadcasting Facilities, 68 FCC2d 979 (1978).
[17] Minority Ownership of Cable Television Systems, 52 R.R.2d 1469 (1982).
[18] 52 R.R.2d at n. 1.
[19] Commission's Policy Regarding the Advancement of Minority Ownership in Broadcasting, Policy Statement, and Notice of Proposed Rulemaking, 92 FCC2d 853–855 (1982).
[20] See Amendment of Section 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control), 57 R.R.2d 1149 (1985).
[21] Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC2d 849 (1982).

to repeal, to retroactively apply changes in, or to continue a reexamination of its comparative licensing, distress sale and tax certificate policies.[22] This limitation has not prevented an expansion of the existing program.[23]

Personal communications services ownership policy

In 1993, Congress provided for the orderly transfer of frequencies, including frequencies that can be licensed pursuant to competitive bidding procedures.[24] The FCC has adopted rules to conduct auctions for the award of more than 2,000 licenses to provide personal communications services ("PCS"). PCS will be provided by means of a new generation of communication devices that will include small, lightweight, multi-function portable phones, portable facsimile and other imaging devices, new types of multichannel cordless phones, and advanced paging devices with two-way data capabilities. The PCS auctions (which began last year) will constitute the largest auction of public assets in American history and are expected to generate billions of dollars for the United States Treasury.[25]

In their proposed rules, the FCC has designed procedures to ensure that small businesses, rural telephone companies and businesses owned by women and minorities have "the opportunity to participate in the provision" of PCS, as Congress directed in 1993.[26] To help minorities and women participate in the auction of the PCS licenses, the FCC took several steps including a 15-percent bidding credit, a reduced upfront payment requirement, a flexible installment payment schedule, and an extension of the tax certificate program for businesses owned by minorities and women.[27]

The tax certificate program for PCS will be extended in three ways: (1) initial investors (who provide "start-up" financing or purchase interests within the first year after license issuance) in minority and woman-owned PCS businesses will be eligible for FCC tax certificates upon the sale of their investments; (2) holders of PCS licenses will be able to obtain FCC tax certificates upon the sale of the business to a company controlled by minorities and women; and (3) a cellular operator that sells its interest in an overlapping cellular system to a minority or a woman-owned business to come into compliance with the FCC PCS/cellular cross-ownership rule will be eligible for a tax certificate.[28]

FCC interpretation of tax certificate program

The standards for FCC tax certification have been progressively loosened over time. As noted above, in 1956, the FCC's construction of the term "necessary or appropriate" in Code section 1071 led it

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[22] Pub. L. No. 100–202 (1987).

[23] The appropriations restriction "does not prohibit the agency from taking steps to create greater opportunity for minority ownership." H. Conf. Rep. No. 103–708, 103d Cong. 2d Sess. 40 (1994).

[24] Omnibus Budget Reconciliation Act of 1993, P.L. 103–66, Title VI.

[25] Fifth Report and Order, 9 FCC Rcd 5532 (1994).

[26] Omnibus Budget Reconciliation Act of 1993, P.L. 103–66, section 6002(a).

[27] Installment payments are available to small businesses and rural telephone companies.

[28] Tax certificates also have been employed as a means of encouraging fixed microwave operators to relocate from spectrum allocated to emerging technologies. See, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993). An AM expanded band policy also is available, but has never been used. Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd 6273 (1991).

to require a showing of the involuntary nature of the divestiture.[29] However, in 1970, the FCC lessened the required showing to a "causal relationship" between the divestiture and the specific FCC policy, as a condition for the issuance of a certificate.[30] Subsequently, the FCC determined that voluntary divestitures that effectuate specific ownership policies are "appropriate," and eliminated the "causal relationship" requirements.[31] Further, in adopting the minority ownership policy described above, the FCC stated that "originally tax certification was used to remove the hardship of involuntary transfer as a result of divesture imposed by the Commission's multiple ownership rules. Now, however, tax certificates are routinely approved in voluntary sales. * * *"[32]

Other FCC minority ownership programs

Apart from the FCC tax certificate program, there are other programs administered by the FCC to foster minority ownership. The FCC awards comparative merit in licensing proceedings to minority applicants in the interest of promoting minority entrepreneurship.[33] In addition, the FCC's distress sale policy allows broadcasting licensees whose licenses have been designated for revocation hearing, prior to the commencement of a hearing, to sell their station to a minority-owned or controlled entity, at a price "substantially" below its fair market value.[34] A licensee whose license has been designated for hearing would ordinarily be prohibited from selling, assigning or otherwise disposing of its interest, until the issues have been resolved in the licensee's favor.

Effectiveness of FCC minority ownership programs

FCC tax certificate program

The FCC reports that it has issued 390 tax certificates since 1978.[35] Of that total, the FCC has issued 330 tax certificates under the minority ownership program[36] (an additional 18 certificates have been issued to parties contributing start-up capital to a minority-controlled entity to acquire broadcast or cable properties).[37] Thus, minority ownership transfers have represented almost 90 percent of total tax certificate transfers over the past 16 years. The majority (about 80 percent) of license transfers relating to minority ownership tax certificates involve radio properties, as would be expected because most outstanding licenses are for radio.[38]

The average sales price for the transactions in which tax certificates were granted was $3.5 million for radio, and $38 million for television.[39] No average sales price information is available for

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[29] FCC Announces New Policy Relating to Tax Certificates, 14 FCC2d 827 (1956).
[30] Issuance of Tax Certificates, 19 RR 1831 (1970).
[31] In re Issuance of Tax Certificates, 59 FCC2d 91 (1976).
[32] Minority Ownership of Broadcasting Facilities, 68 FCC2d 979 (1978).
[33] Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC2d 849 (1982).
[34] Id.
[35] Statement of William E. Kennard, General Counsel of the FCC, before the Subcommittee on Oversight of the Committee on Ways and Means, January 27, 1995.
[36] Id.
[37] Letter from William E. Kennard, General Counsel of the FCC, to Kenneth J. Kies, Chief of Staff of the Joint Committee on Taxation, dated February 7, 1995.
[38] Statement of William E. Kennard, General Counsel of the FCC, before the Subcommittee on Oversight of the Committee on Ways and Means, January 27, 1995.
[39] Id.

cable system sales, although the average sales prices is expected to be much larger.[40] No information is available concerning the lost revenue associated with the transactions for which the FCC has issued tax certificates in minority ownership transfers because the FCC does not take into account the amount of lost tax revenue in determining whether to issue a tax certificate. Moreover, the FCC does not request any such information as part of the application process, nor does it request any showing that the amount of the tax benefit, which at least initially accrues to the non-minority seller generally, is in any way transferred economically to the minority-owned or controlled purchaser in the form of a reduced purchase price to the minority purchaser.

The 330 license transfers reported over the past 16 years do not reflect net additions to the number of licenses held by minority persons, because some of the certificate transfers under the minority ownership program represent sales from one minority person to another minority person. In addition, as indicated below, in many cases the minority buyers have subsequently sold their interests. Thus, it is not possible to determine the extent to which the tax certificate program has increased the absolute level of minority ownership of broadcast properties.

The FCC has very little data on the extent to which FCC tax certificates foster "real" minority ownership of broadcast stations. The FCC's records show that four of 40 television licenses have been transferred by a minority-controlled entity after the license was acquired in a tax certificate transaction.[41] The average holding period for these four licenses prior to transfer was 2.25 years. In radio, 130 of 183 (71 percent) stations acquired in tax certificate transactions during the period 1979–1992 for which the FCC has data were sold at the close of 1992. The average holding period was 3.5 years. The FCC was unable to provide data on the number of cable licenses acquired in tax certificate transactions and the average holding period prior to transfer.

Recent news reports suggest that FCC tax certificates are not fostering "real" minority ownership of broadcast stations.[42] In some instances, a minority investor purports to control the buyer (often a limited partnership or other syndication) but effectively lacks real control due to the small economic interest of the minority investor. In other instances, minority buyers are reported to have resold the broadcast property (or their interest in the property) shortly after the original sale.

FCC minority ownership programs

There is no data that documents the overall effectiveness of the FCC minority ownership programs (including the tax certificate program) or the effectiveness of any particular FCC minority ownership program. Moreover, some recently published analysis has

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[40] Id.

[41] Letter from William E. Kennard, General Counsel of the FCC, to Kenneth J. Kies, Chief of Staff of the Joint Committee on Taxation, dated February 7, 1995.

[42] "Viacom Deal's Big Tax Break Concerns FCC," Washington Post, January 11, 1995; "FCC Minority Program Spurs Deals—and Questions," Washington Post, June 3, 1993; "How the Rich Get Richer," Forbes, May 15, 1989.

questioned both the appropriateness and effectiveness of the program.[43]

Some limited empirical data exists on minority ownership of broadcast facilities generally. The National Telecommunications and Information Administration reports that minority persons hold 2.9 percent of all broadcast licenses.[44] This is an increase from the 1978 level estimated at 0.5 percent, but is lower than a peak of 3.0 percent attained in the mid-1980s. These ownership numbers, however, do not measure the extent of equity investments, but rather attempt to measure "control" of the broadcast and cable television properties. As discussed above, "control" has been found by the FCC to exist in the context of a purchase of a license by a partnership where the minority general partner owns as little as 20 percent of the total equity in the purchasing partnership, and that ownership interest may be subject to further financial conditions that may further weaken the minority's influence.

Moreover, the percentages probably overstate the degree of minority ownership in broadcasting as the percentage of minority ownership in large markets is less than the national percentage would suggest. In addition, the percentages are also not weighted by the dollar value of outstanding broadcast licenses.

Present Law

Tax treatment of a Seller of Broadcast Property

General tax rules

Under generally applicable Code provisions, the seller of a business, including a broadcast business, recognizes gain to the extent the sale price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is then subject to the current income tax unless the gain is deferred or not recognized under a special tax provision.

Special rules under Code section 1033

Under Code section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property. The replacement property may be acquired directly or by acquiring control of a corporation (generally, 80 percent of the stock of the corporation) that owns replacement property.

Only involuntary conversions that result from destruction, theft, seizure, or condemnation (or threat or imminence thereof) are eligible for deferral under Code section 1033. In addition, the term "condemnation" refers to the process by which private property is taken for public use without the consent of the property owner but upon the award and payment of just compensation, according to a ruling by the Internal Revenue Service (IRS).[45] Thus, for example,

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[43] "Color TV: Diversity-Mongering at the FCC," The New Republic, Vol. 211; No. 25, p. 9 (December 19, 1994).

[44] National Telecommunications and Information Administration, United States Department of Commerce, Analysis and Compilation of Minority-Owned Commercial Broadcast Stations, 1994.

[45] Rev. Rul. 58–11, 1958–1 C.B. 273.

an order by a Federal court to a corporation to divest itself of ownership of certain stock because of anti-trust rules, is not a condemnation (or a threat or imminence thereof), and the divestiture is not eligible for deferral under this provision.[46]

In addition, under rulings issued by the IRS to taxpayers, property (stock or assets) purchased from a related person may, in some cases, qualify as property similar or related in service or use to the converted property.[47] Thus, in certain circumstances, related taxpayers may obtain significant (and possibly indefinite) tax deferral without any additional cash outlay to acquire new properties.

Special rules under Code section 1071

Under Code section 1071, if the FCC certifies that a sale or exchange of property is necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the FCC with respect to the ownership and control of "radio broadcasting stations," a taxpayer may elect to treat the sale or exchange as an involuntary conversion. The FCC is not required to determine the tax consequences of certifying a sale or to consult with the IRS about the certification process.[48] No other provision of the Internal Revenue Code grants a Federal agency or any other party the type of complete discretion conveyed to the FCC by section 1071. Moreover, no other tax provision is either drafted or administered in a manner which conveys tax benefits solely on the basis of racial classification.[49]

Under Code section 1071, the replacement requirement in the case of FCC-certified sales may be satisfied by purchasing stock of a corporation that owns broadcasting property, whether or not the stock represents control of the corporation. In addition, even if the taxpayer does not reinvest all the sales proceeds in similar or related replacement property, the taxpayer nonetheless may elect to defer recognition of gain if the basis of depreciable property that is owned by the taxpayer immediately after the sale or that is acquired during the same taxable year is reduced by the amount of deferred gain.

Tax Treatment of a Buyer of Broadcast Property

Under generally applicable Code provisions, the purchaser of a broadcast business, or any other business, acquires a basis equal to the purchase price paid. In an asset acquisition, a buyer must allocate the purchase price among the purchased assets to determine the buyer's basis in these assets. In a stock acquisition, the buyer takes a basis in the stock equal to the purchase price paid, and the business retains its basis in the assets. This treatment applies whether or not the seller of the broadcast property has re-

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[46] Id.

[47] See, e.g., PLR 8132072, PLR 8020069. Private letter rulings do not have precedential authority and may not be relied upon by any taxpayer other than the taxpayer receiving the ruling but are some indication of IRS administrative practice.

[48] The FCC allows sellers applying for FCC certificates in cable transactions to delete both the sales price and the number of subscribers from the transaction documents submitted with the request for the certificates.

[49] The only possible exception to this rule are various provisions applicable to American Indian tribes, although these provisions are clearly distinguishable due to the fact that they generally emanate from the separate nation status of American Indians reflected, at least in part, in the rights conveyed on American Indians by treaties with the U.S. government.

ceived an FCC certificate exempting the sale transaction from the normal tax treatment.

Reasons for Change

Testimony provided at the Oversight Subcommittee's January 27, 1995, hearing, and documents reviewed pursuant to the Subcommittee's examination, revealed serious tax policy problems with this provision of the Internal Revenue Code. Moreover, the Subcommittee's review revealed serious problems in the operation and administration of Code Section 1071 by the FCC. As an initial matter, the FCC's progressive loosening of the standards for issuing tax certificates went far beyond what Congress originally contemplated for administration of the provision. Congress originally intended Code section 1071 to alleviate the burden of taxpayers who had been forced to sell their radio stations under difficult wartime circumstances. The FCC has interpreted the provision to permit the FCC to grant unlimited tax benefits for routine and voluntary sales of a wide range of communication properties.

In addition, the FCC's standards for issuing tax certificates have been so vague that the program appears to have been subject to significant abuse. For example, the FCC's definition of "control" for purposes of its minority ownership policies provides little guarantee that a minority will effectively manage a broadcast property after the sale of property has been certified. Moreover, the FCC does not require continuing minority ownership as condition of receiving an FCC certificate and, in many cases, the minority ownership or control has been merely transitory. For example, with respect to radio station transactions receiving tax certificates during the period 1979-1992 and for which the FCC was able to supply data, approximately 71 percent of such stations were no longer held by the original minority purchaser at the close of 1992.

Further, the FCC's interpretation and administration of the tax certificate program has not been supervised by the IRS, or any other government body that could evaluate the tax cost of the program. Also, the FCC's tax certificate program has not been subject to any systematic review of its total cost to the taxpayers. In granting tax certificates, the FCC does not take into account the size of the potential tax benefit involved. Indeed, neither the FCC nor the IRS request information concerning the magnitude of the tax benefit granted in determining whether to issue tax certificates. The FCC also does not request any showing or representation that the amount of the tax benefits, which at least initially accrue to the non-minority seller generally, is in any way reflected in the form of a lower purchase price to the minority-owned or controlled purchaser. As a result, it is possible that, in many cases, the entire tax benefit accrues to the non-minority seller.

From a tax policy perspective, the Oversight Subcommittee's review revealed serious deficiencies in section 1071. No other provision of the Internal Revenue Code conveys the level of discretion to a Federal government agency (or any other party for that matter) in any way comparable to the discretion conveyed on the FCC by section 1071. Thus, section 1071 grants the authority to the FCC to administer what is, in effect, an open-ended entitlement program with no constraints imposed to limit the extent to which

the FCC may utilize the provision. Moreover, no other provision, either by its statutory terms or through its administration, conveys tax benefits solely on the basis of racial status.

Finally, the benefits of the FCC certificate program have not been quantified in any meaningful manner. As noted above, tax certificates have been issued for sales of broadcast property to "minority controlled" entities that do not appear to have fostered significant minority ownership of broadcast stations. Because the FCC generally requires only one year of minority ownership or control to qualify for a tax certificate, section 1071 has frequently resulted in only transitory minority ownership of broadcast properties, i.e., in many cases the granting of the tax certificate has not resulted in achieving the objective of minority ownership or control.

As a result of these considerations, the Committee concluded that the tax cost of the FCC tax certificate program far outweighs any demonstrated benefit of the program. The Committee also concluded that the section is completely inconsistent with sound tax policy. The Committee therefore is repealing the provision.

In the course of its deliberations, the Committee also became aware of problems with the operation of Code section 1033. Under interpretations issued by the IRS, taxpayers are able to purchase replacement property from a related party, thereby avoiding the need to buy "new" replacement property and, sometimes, effectively resulting in a total tax forgiveness for the transaction. The Committee intends that, in the future, taxpayers be required to buy replacement property only from unrelated persons in order to receive the special tax treatment under section 1033.

Explanation of Provisions

Repeal of Code Section 1071 (sec. 2 of the bill)

The bill repeals Code section 1071. Thus, a sale or exchange of broadcast properties would be subject to the same tax rules applicable to all other taxpayers engaged in the sale or exchange of a business.

Modification of Code Section 1033 (sec. 3 of the bill)

In addition, under the bill, a taxpayer may not defer gain under Code section 1033 when the replacement property or stock is purchased from a related person. For purposes of the bill, a person is treated as related to another person if the relationship between the persons would result in a disallowance of losses under the rules of Code section 267 or 707(b).

Effective Dates

Repeal of Code Section 1071

The repeal of section 1071 is effective for (1) sales or exchanges on or after January 17, 1995 (the date of Chairman Archer's press release), and (2) sales or exchanges before that date if the FCC tax certificate with respect to the sale or exchange is issued on or after that date. The provision does not apply to taxpayers who have entered into a binding written contract (or have completed a sale or exchange pursuant to a binding written contract) before January

17, 1995, and who have applied for an FCC tax certificate by that date. A contract is treated as not binding for this purpose if the sale or exchange pursuant to the contract (or the material terms of the contract) were contingent on January 16, 1995, on issuance of an FCC tax certificate. A sale or exchange would not be contingent on January 16, 1995, on issuance of an FCC tax certificate if the tax certificate had been issued by the FCC by that date.

Modification of Code Section 1033

The prohibition against nonrecognition of gain in certain related-party transactions applies to replacement property or stock acquired on or after February 6, 1995 (the date of introduction of H.R. 831).

C. Interest and Dividend Test for Earned Income Tax Credit (sec. 4 of the bill and sec. 32 of the Code)

Present Law

Eligible low-income workers are able to claim a refundable earned income tax credit (EITC). The amount of the credit an eligible taxpayer may claim depends upon whether the taxpayer has one, more than one, or no qualifying children and is determined by multiplying the credit rate by the taxpayer's earned income up to an earned income threshold. The maximum amount of the credit is the product of the credit rate and the earned income threshold. For taxpayers with earned income (or adjusted gross income, if greater) in excess of the phaseout threshold, the credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or adjusted gross income, if greater) in excess of the phaseout threshold. The credit is not allowed if earned income (or adjusted gross income, if greater) exceeds the phaseout limit. There is no additional limitation on the amount of interest and dividend income that the taxpayer may receive.

The parameters for the EITC depend upon the number of qualifying children the taxpayer claims. For 1995 the parameters are as follows:

	Two or more qualifying children—	One qualifying child—	No qualifying children—
Credit rate (in percent)	36.00	34.00	7.65
Phaseout rate (in percent)	20.22	15.98	7.65
Earned income threshold	$8,640	$6,160	$4,100
Maximum credit	$3,110	$2,094	$314
Phaseout threshold	$11,290	$11,290	$5,130
Phaseout limit	$26,673	$24,396	$9,230

The earned income threshold and the phaseout threshold are indexed for inflation; because the phaseout limit depends on those amounts, the phaseout rate, and the credit rate, the phaseout limit will also increase if there is inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

The credit rates and phaseout rates for the EITC change over time under present law. For 1996 and after, the credit rate will be 40 percent and the phaseout rate will be 21.06 percent for tax-

payers with two or more qualifying children. The credit rate and the phaseout rate for taxpayers with one qualifying child or no qualifying children will be the same as those listed in the table above.

In order to claim the EITC, a taxpayer must either have a qualifying child or must meet other requirements. A qualifying child must meet a relationship test, an age test, and a residence test. In order to claim the EITC without a qualifying child, a taxpayer must not be a dependent and must be over age 24 and under age 65.

Reasons for Change

Under present law, a taxpayer may have relatively low earned income, and therefore may be eligible for the EITC, despite also having significant interest and dividend income. The Committee believes that the EITC should be targeted to families with the greatest need. Therefore, the Committee believes that it is inappropriate to allow the EITC to taxpayers with significant interest and dividend income.

Explanation of Provision

Under the bill, a taxpayer is not eligible for the EITC if the aggregate amount of interest and dividends includible in his or her income for the taxable year exceeds $3,150. The otherwise allowable EITC amount is phased out ratably for taxpayers with aggregate taxable interest and dividend income between $2,500 and $3,150. For taxable years beginning after 1996, the $2,500 threshold and the $650 size of the phaseout will be indexed for inflation, with rounding to the nearest multiple of $10.

Effective Date

The provision is effective for taxable years beginning after December 31, 1995.

III. VOTES OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee in its consideration of the bill, H.R. 831.

Motion to Report the Bill

The bill, H.R. 831, as amended, was ordered favorably reported by voice vote on February 8, 1995, with a quorum present.

Votes on Amendments

The Committee defeated an amendment (9 yeas and 27 nays) offered by Mr. Jacobs to strike the bill's proposed repeal of Code section 1071 (FCC tax certificate program) and replace the provision with a reinstatement of the prior law withholding tax on interest from sources within the United States paid to foreign persons, effective for interest paid on or after January 17, 1995. The roll call vote was as follows:

YEAS	NAYS
Mr. Rangel	Mr. Archer
Mr. Stark	Mr. Crane
Mr. Jacobs	Mr. Thomas
Mr. Ford	Mr. Shaw
Mrs. Kennelly	Mrs. Johnson
Mr. Coyne	Mr. Bunning
Mr. McDermott	Mr. Houghton
Mr. Lewis	Mr. Herger
Mr. Neal	Mr. McCrery
	Mr. Hancock
	Mr. Camp
	Mr. Ramstad
	Mr. Zimmer
	Mr. Nussle
	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen
	Mr. Gibbons
	Mr. Matsui
	Mr. Levin
	Mr. Cardin
	Mr. Kleczka
	Mr. Payne

The Committee defeated an amendment (10 yeas and 25 nays) offered by Mr. Ford of Tennessee to strike the bill's proposed repeal of Code section 1071 (FCC tax certificate program) and replace it with a provision to disallow expense treatment for intangible drilling and development costs, effective for costs incurred on or after January 17, 1995. The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Rangel	Mr. Crane
Mr. Stark	Mr. Thomas
Mr. Jacobs	Mr. Shaw
Mr. Ford	Mrs. Johnson
Mrs. Kennelly	Mr. Bunning
Mr. Coyne	Mr. Houghton
Mr. McDermott	Mr. McCrery
Mr. Lewis	Mr. Hancock
Mr. Neal	Mr. Camp
	Mr. Ramstad
	Mr. Zimmer
	Mr. Nussle
	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen
	Mr. Matsui
	Mr. Levin
	Mr. Cardin
	Mr. Kleczka
	Mr. Payne

The Committee defeated an amendment (15 yeas and 21 nays) offered by Mr. McDermott to replace the repeal of Code section 1071 with an en bloc amendment relating to the FCC tax certificate program and a provision from the President's fiscal year 1996 budget proposal to tax the unrealized appreciation of assets held by citizens of the United States who renounce their U.S. citizenship. The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Rangel	Mr. Crane
Mr. Stark	Mr. Thomas
Mr. Jacobs	Mr. Shaw
Mr. Ford	Mrs. Johnson
Mr. Matsui	Mr. Bunning
Mrs. Kennelly	Mr. Houghton
Mr. Coyne	Mr. Herger
Mr. Levin	Mr. McCrery
Mr. Cardin	Mr. Hancock
Mr. McDermott	Mr. Camp
Mr. Kleczka	Mr. Ramstad

Mr. Lewis	Mr. Zimmer
Mr. Payne	Mr. Nussle
Mr. Neal	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen

The Committee defeated an amendment (10 yeas and 26 nays) offered by Mr. Rangel to strike section 2 of the bill (relating to the FCC tax certificate program). The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Rangel	Mr. Crane
Mr. Stark	Mr. Thomas
Mr. Jacobs	Mr. Shaw
Mr. Ford	Mrs. Johnson
Mrs. Kennelly	Mr. Bunning
Mr. Coyne	Mr. Houghton
Mr. McDermott	Mr. Herger
Mr. Lewis	Mr. McCrery
Mr. Neal	Mr. Hancock
	Mr. Camp
	Mr. Ramstad
	Mr. Zimmer
	Mr. Nussle
	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen
	Mr. Matsui
	Mr. Levin
	Mr. Cardin
	Mr. Kleczka
	Mr. Payne

The Committee defeated an amendment (15 yeas and 20 nays) offered by Messrs. Cardin and Neal to increase the deduction for health insurance costs of the self-employed to 80 percent for 1995 and 1996, and to sunset the deduction after 1996. The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Rangel	Mr. Crane
Mr. Stark	Mr. Thomas
Mr. Jacobs	Mr. Shaw
Mr. Ford	Mrs. Johnson
Mr. Matsui	Mr. Bunning
Mrs. Kennelly	Mr. Houghton

Mr. Coyne	Mr. Herger
Mr. Levin	Mr. McCrery
Mr. Cardin	Mr. Hancock
Mr. McDermott	Mr. Camp
Mr. Kleczka	Mr. Ramstad
Mr. Lewis	Mr. Zimmer
Mr. Payne	Mr. Nussle
Mr. Neal	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Christensen

The Committee defeated an amendment (9 yeas and 27 nays) offered by Mr. Ford to strike the bill's repeal of Code section 1071 and replace it with a repeal of percentage depletion for oil and gas wells, effective for periods on or after January 17, 1995. The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Rangel	Mr. Crane
Mr. Stark	Mr. Thomas
Mr. Jacobs	Mr. Shaw
Mr. Ford	Mrs. Johnson
Mrs. Kennelly	Mr. Bunning
Mr. Coyne	Mr. Houghton
Mr. McDermott	Mr. Herger
Mr. Lewis	Mr. McCrery
	Mr. Hancock
	Mr. Camp
	Mr. Ramstad
	Mr. Zimmer
	Mr. Nussle
	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen
	Mr. Matsui
	Mr. Levin
	Mr. Cardin
	Mr. Kleczka
	Mr. Payne
	Mr. Neal

The Committee defeated an amendment (14 yeas and 20 nays) offered by Mr. McDermott to provide that employees not eligible to participate in an employer-subsidized health plan would be eligible to deduct 25 percent of their health insurance premiums. The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Stark	Mr. Crane
Mr. Jacobs	Mr. Thomas
Mr. Ford	Mr. Shaw
Mr. Matsui	Mrs. Johnson
Mrs. Kennelly	Mr. Bunning
Mr. Coyne	Mr. Houghton
Mr. Levin	Mr. McCrery
Mr. Cardin	Mr. Hancock
Mr. McDermott	Mr. Camp
Mr. Kleczka	Mr. Ramstad
Mr. Lewis	Mr. Zimmer
Mr. Payne	Mr. Nussle
Mr. Neal	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen

The Committee defeated an amendment (14 yeas and 21 nays) offered by Mr. Ford to impose a 6-month moratorium on issuance of FCC tax certificates. A report would be required by the Department of the Treasury to the Committee on Ways and Means by July 8, 1995, with recommendations for reform of Code section 1071. The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Stark	Mr. Crane
Mr. Jacobs	Mr. Thomas
Mr. Ford	Mr. Shaw
Mr. Matsui	Mrs. Johnson
Mrs. Kennelly	Mr. Bunning
Mr. Coyne	Mr. Houghton
Mr. Levin	Mr. Herger
Mr. Cardin	Mr. McCrery
Mr. McDermott	Mr. Hancock
Mr. Kleczka	Mr. Camp
Mr. Lewis	Mr. Ramstad
Mr. Payne	Mr. Zimmer
Mr. Neal	Mr. Nussle
	Mr. Johnson
	Mr. Dunn
	Ms. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen

The Committee defeated an amendment (13 yeas and 22 nays) offered by Mr. Stark to remove the current time limitations on

COBRA health insurance continuation benefits. The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Rangel	Mr. Crane
Mr. Stark	Mr. Thomas
Mr. Ford	Mr. Shaw
Mr. Matsui	Mrs. Johnson
Mrs. Kennelly	Mr. Bunning
Mr. Coyne	Mr. Houghton
Mr. Levin	Mr. Herger
Mr. Cardin	Mr. McCrery
Mr. McDermott	Mr. Hancock
Mr. Kleczka	Mr. Camp
Mr. Lewis	Mr. Ramstad
Mr. Neal	Mr. Zimmer
	Mr. Nussle
	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen
	Mr. Payne

The Committee defeated an amendment (15 yeas and 21 nays) offered by Mr. Rangel to strike section 3 of the bill (relating to nonrecognition of gain on involuntary conversions not to apply if replacement property is acquired from a related person). The roll call vote was as follows:

YEAS	NAYS
Mr. Gibbons	Mr. Archer
Mr. Rangel	Mr. Crane
Mr. Stark	Mr. Thomas
Mr. Jacobs	Mr. Shaw
Mr. Ford	Mrs. Johnson
Mr. Matsui	Mr. Bunning
Mrs. Kennelly	Mr. Houghton
Mr. Coyne	Mr. Herger
Mr. Levin	Mr. McCrery
Mr. Cardin	Mr. Hancock
Mr. McDermott	Mr. Camp
Mr. Kleczka	Mr. Ramstad
Mr. Lewis	Mr. Zimmer
Mr. Payne	Mr. Nussle
Mr. Neal	Mr. Johnson
	Ms. Dunn
	Mr. Collins
	Mr. Portman
	Mr. English
	Mr. Ensign
	Mr. Christensen

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 831, as reported.

The bill, as amended, is estimated to have the following effects on budget receipts (and outlays) for fiscal years 1995–2000:

Estimated Budget Effects of H.R. 831 as Reported by the Committee on Ways and Means

[Fiscal years 1995–2000—in millions of dollars]

Provision	Effective	1995	1996	1997	1998	1999	2000	1995–00
1. Extend 25% self-employed health deduction permanently ..	1/1/94	−487	−398	−435	−484	−536	−584	−2,925
2. Repeal section 1071 (FCC tax certificate program)	1/17/95	334	411	135	135	170	201	1,386
3. Modify section 1033 (non-recognition of gain on involuntary conversions not to apply to related persons)[1]	2/6/95	11	27	36	49	67	99	289
4. Deny earned income tax credit to individuals with interest and dividend income greater than $2,500 (phaseout between $2,500 and $3,150)[2]	1/1/96	.....	14	285	308	318	335	1,260
Total	.....	−142	54	21	8	19	51	10

[1] This estimate includes adjustment to account for interaction with the repeal of section 1071.

[2] Included in this estimate are decreases in EITC outlays of $12 million for FY 1996, $231 million for FY 1997, $246 million for FY 1998, $256 million for FY 1999, and $269 million for FY 2000.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the outlay portion of the interest and dividend limitation on the EITC involves decreased budget authority (amounts shown above in IV.A).

The Committee further states that the extension of the deduction for health insurance costs of self-employed individuals involves increased tax expenditures (amounts shown above in IV.A), and that the revenue-increasing provisions (repeal of FCC tax certificate program under Code section 1071, involuntary conversion provision for related persons under Code section 1033, and the receipts portion of the interest and dividend limitation on the EITC) involve reductions in tax expenditures (amounts shown above in IV.A).

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with subdivision (C) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided. The Committee agrees with the estimate prepared by CBO.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 14, 1995.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office and the Joint Committee on Taxation (JCT) have reviewed H.R. 831, as ordered reported by the House Committee on Ways and Means on February 8, 1995. The JCT estimates that this bill would increase the deficit by $142 million in fiscal year 1995 and decrease the deficit by $10 million over fiscal years 1995 through 2000.

H.R. 831 would make permanent the 25 percent deduction for health insurance costs of self-employed individuals that expired after December 31, 1993. The deduction would be effective for taxable years beginning after December 31, 1993.

To offset the revenue loss from extending the deduction, the bill would repeal the provision of the Internal Revenue Code that permits nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission and would prohibit nonrecognition of gain on involuntary conversions in certain related-party transactions. Also, the bill would deny the earned income tax credit to individuals having more than $2,500 of interest and dividend income. The budget effects of the bill are shown below.

Budget Effects of H.R. 831

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Estimated revenues [1]	−142	42	−210	−238	−237	−218
Estimated outlays	0	−12	−231	−246	−256	−269
Net increase (+) or decrease (−) in deficit	142	−54	−21	−8	−19	−51

[1] Positive changes refer to an increase in revenues.

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because H.R. 831 would affect receipts, pay-as-you-go procedures would apply to the bill. These effects are summarized in the table below.

Pay-as-You-Go Considerations

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998
Changes in Receipts	−142	42	−210	−238
Changes in Outlays	0	−12	−231	−246

If you wish further details, please feel free to contact me or your staff may wish to contact Melissa Sampson at 226–2720.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's oversight activities concerning the deduction for health insurance costs of self-employed individuals, the trends in the administration and operation of the FCC's tax certificate program (under Code section 1071), the nonrecognition of gain on involuntary conversions (under Code section 1033) where replacement property is acquired from a related person, and the availability of the EITC for individuals with significant amounts of unearned income from taxable interest and dividends that the Committee concluded that it is appropriate to enact the provisions contained in the bill as amended. (See also Parts I.B and I.C of this report for a discussion of the background of the bill and the legislative history and hearings held on the provisions included in the bill).

B. Summary of Findings and Recommendations of the Committee on Government Reform and Oversight

With respect to subdivision (D) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in this bill.

C. Inflationary Impact Statement

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill are not expected to have an overall inflationary impact on prices and costs in the operation of the national economy. As indicated above (in Part IV of this report), the bill is projected to be deficit neutral over fiscal years 1995–2000.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart C—Refundable Credits

* * * * * * *

SEC. 32. EARNED INCOME.

(a) * * *

* * * * * * *

(i) PHASEOUT OF CREDIT FOR INDIVIDUALS HAVING MORE THAN $2,500 OF TAXABLE INTEREST AND DIVIDENDS.—If the aggregate amount of interest and dividends includible in the gross income of the taxpayer for the taxable year exceeds $2,500, the amount of the credit which would (but for this subsection) be allowed under this section for such taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to such amount of credit as such excess bears to $650.

[(i)] *(j)* INFLATION ADJUSTMENTS.—

(1) IN GENERAL.—In the case of any taxable year beginning after 1994, each dollar amount contained in subsection (b)(2)(A) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting "calendar year 1993" for "calendar year 1992".

[(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if

such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10).]

(2) INTEREST AND DIVIDEND INCOME LIMITATION.—In the case of a taxable year beginning in a calendar year after 1996, each dollar amount contained in subsection (i) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 1995" for "calendar year 1992" in subparagraph (B) thereof.

(3) ROUNDING.—If any amount as adjusted under paragraph (1) or (2) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.

[(j)] *(k)* COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—For purposes of—

(1) the United States Housing Act of 1937,

(2) title V of the Housing Act of 1949,

(3) section 101 of the Housing and Urban Development Act of 1965,

(4) section 221(d)(3), 235, and 236 of the National Housing Act, and

(5) the Food Stamp Act of 1977,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).

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Subchapter B—Computation of Taxable Income

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

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SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) * * *

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(l) SPECIAL RULES FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—

(1) * * *

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[(6) TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 1993.]

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Subchapter O—Gain or Loss on Disposition of Property

Part I. Determination of amount and recognition of gain or loss.

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[Part V. Changes to effectuate F.C.C. policy.]

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PART III—COMMON NONTAXABLE EXCHANGES

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SEC. 1033. INVOLUNTARY CONVERSIONS.

(a) * * *

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(i) NONRECOGNITION NOT TO APPLY IF REPLACEMENT PROPERTY ACQUIRED FROM RELATED PERSON.—Subsection (a) shall not apply if the replacement property or stock acquired is acquired from a related person. For purposes of the preceding sentence, a person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b).

[(i)] *(j)* CROSS REFERENCES.—

(1) For determination of the period for which the taxpayer has held property involuntarily converted, see section 1223.

(2) For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231(a).

(3) For one-time exclusion from gross income of gain from involuntary conversion of principal residence by individual who has attained age 55, see section 121.

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[PART V—CHANGES TO EFFECTUATE F.C.C. POLICY

[Sec. 1071. Gain from sale or exchange to effectuate policies of F. C. C.

[SEC. 1071. GAIN FROM SALE OR EXCHANGE TO EFFECTUATE POLICIES OF F.C.C.

[(a) NONRECOGNITION OF GAIN OR LOSS.—If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of section 1033. For purposes of such section as made applicable by the provisions of this section, stock of a corporation operating a radio broadcasting station, whether or not representing control of such corporation, shall be treated as property similar or related in service or use to the property so converted. The part of the gain, if any, on such sale or exchange to which section 1033 is not applied shall nevertheless not be recognized, if the taxpayer so elects, to the extent that it is applied to reduce the basis for determining gain or loss on sale or exchange of property, of a character subject to the allowance for depreciation under section 167, remaining in the hands of the taxpayer immediately after the sale or exchange, or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary. Any election made by the taxpayer under this section shall be made by a statement to that effect in his return for the taxable year in which the sale or exchange takes place, and such election shall be binding for the taxable year and all subsequent taxable years.

[(b) BASIS.—

[For basis of property acquired on a sale or exchange treated as an involuntary conversion under subsection (a), see section 1033(b).]

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VII. DISSENTING VIEWS OF THE HONORABLE CHARLES B. RANGEL AND THE HONORABLE HAROLD E. FORD

We dissent from reporting H.R. 831 because of both procedural and substantive reasons. We are concerned that the bill was rushed to consideration without appropriate hearings on all of the provisions in the bill, without a report from the Subcommittee on Oversight on a provision reviewed by the Subcommittee, and without sufficient time to review the bill itself. We are also very concerned about the repeal of section 1071 of the Internal Revenue Code, that the repeal is retroactive, whether the repeal will result in the revenue anticipated, the impact such repeal will have on the ability of minorities to participate in the broadcast business as owners and operators and the statement such repeal makes about the nation's commitment to social justice.

We are particularly concerned that this bill represents the driving of a wedge within our society between people based on racial and ethnic grounds. It disturbs us that this bill may represent a trend to legislatively undo statutory and other means for providing opportunity for minorities previously denied by either overt or benign discrimination. We fear that this bill could represent this Congress's first step in dismantling the efforts to assure that minorities can truly have equal opportunity in the American society. With this report the Committee has moved to again close the door on minorities keeping them out of the mainstream of America. It is insensitive to the aspirations of the African-American, Hispanic, Native American and Asian communities.

While the Chair was within the rules of the Committee and the House to have brought this bill to the Committee in the manner it was, the action left the Committee with very little time or assistance in reviewing its provisions. The members of the Committee were given only one day's notice of markup of this bill. The markup notice and agenda issued the previous week distinctly excluded any of the provisions of this bill.

Committee rules require a 2-day layover of bills reported from a subcommittee to give the members of the Committee a chance to review the legislation before voting on the measure. If that standard is appropriate where a subcommittee acts, it is even more necessary when there has been no subcommittee mark up or the subcommittee report on the matter has not been issued. Instead, the Chair gave the Committee a mere 24 hours to prepare for the mark up of the legislation.

While we can understand the need to move quickly on the provision for the extension of the deduction of health insurance costs of the self-employed because tax filing dates are soon upon us, we cannot understand the rush to repeal section 1071 of the Internal Revenue Code other than to retroactively impact a completely legal transaction that the majority for whatever reasons does not favor.

We are very concerned that the Committee and the House is moving forward on provisions in this bill without the benefit of full committee hearings. The Committee has not heard witnesses on the matter of the deduction of their health insurance by the self employed. In fact, the Chair of the Subcommittee on Health vigorously and successfully opposed any changes to the health insurance provisions of the bill on the grounds that there have not been hearings. Nor, has the Committee had hearings on the matters of involuntary conversions and the changes in the provisions of the Earned Income Tax Credit. We have moved forward without the benefit of the public's view on the impact of both of these changes in tax law.

What most concerns us with the reporting of this legislation is the movement of the Committee to begin to undo the progress this nation has made to provide opportunity for minorities to fully participate in the economy and social fabric of our nation. We fear that this is part of a national movement expressed in part by the Majority Leader of the other body and by actions in the states such as the petition movement in California, to undo the efforts of affirmative action to fulfill the promise of America for all of its citizens.

We want to believe it is not a considered effort to deny the rights of minorities. Indeed, members of the majority indicated all they want to do is to remove preferences from the tax code and to make the code color blind. However, in the face of a tax code that is replete with tax preferences, and as an American who has seen and lived racial prejudice in a society that in many ways remains so, we cannot interpret the intention of the majority as anything but a response to the fears of Americans about race and equal opportunity.

Many in the majority have strong views about tax preferences and about how they are administered. They believe the tax code should be cleansed of preferences. In this context, we can appreciate the opposition to this tax preference. We are concerned about the Majority starting its reform with this preference. Why is the majority not offering the Committee a more complete list of preferences to be repealed?

Admittedly section 1071 creates a preference. But, it is not much different than any other preference which is designed to achieve a public policy goal. Its goal is to effectuate Federal Communications Commission (FCC) policies about diversity ownership of broadcast licenses. The original impetus was the FCC policy to prevent monopoly ownership of broadcast facilities in a community. The FCC instituted a policy to force sales to break up monopolies. Section 1071 provided relief for owners forced to sell. Since 1978 this policy has been broadened to provide tax benefits for voluntary sales. The basis of such relief is similar to the proposal to compensate property owners inhibited by environmental regulations.

By the late 1960s the FCC came to the conclusion that diversity in ownership among the many racial and ethnic groups was an important goal if the scarce airwaves were to serve all Americans. However, despite all of the Commission's efforts to achieve diversity there was not much success. Though African Americans and Hispanics together represent about 20% of the population, by 1978 when the FCC adopted the minority preference rule minorities held less than 1% of the broadcast licenses.

The need for diversity was and still is clear. This member, an African American, grew up in segregated America where the only impressions from the media of African Americans and Hispanics were negative role models of savage African natives saved from their ignorance by a white man in a loin cloth or shuffling Black slaves or *Amos 'n Andy* or Mexicans sneering or in perpetual siesta. Up through the 1960s and into the 1970s it was difficult for minorities to view TV or listen to the radio and find positive role models. The need to present positive role models for our young continues to plague minority communities. The need to express our views among ourselves and to the larger community remains difficult. The need to develop economic independence remains great, yet for years entire minority communities had no electronic media outlet for their views or for their entrepreneurs to advertise products and services to their own communities.

Thus, in 1978 the FCC adopted the current policy to provide tax certificates to those who sold broadcast properties to minorities.[1]

Some argue that there might be better ways to encourage minority ownership. But, the history indicates otherwise. This is the best way. The FCC had tried other means, but they were not successful.

The FCC expanded the rule during in 1982 to include the sale of cable systems.[2]

Despite the application of section 1071 since 1978 the proportion of licenses in minority hands has only climbed to about 3%. There have been about 330 licenses transfers (260-radio; 40 TV; and 30 cable) where the preference was a factor. During the same period there have been over 15,000 license transactions. Over half of the licenses transferred pursuant to the preference are still in minority control.

It is clear the preference was enacted by Congress to provide the FCC with a tool to manage the airwaves that belong to all Americans. An important responsibility of the FCC is to assure that all Americans have reasonable access to the airwaves. The preference of section 1071 allows the FCC to fulfill this responsibility.

It is not unlike a preference designed by Congress to assure energy independence. Congress has for many years sustained oil depletion allowances, deductions for intangible drilling costs and exceptions to the alternative minimum tax for oil drilling to assure that the nation will have an adequate supply of oil. It matters not that in economic terms all that these preferences do is encourage drilling at lower breakeven points. Should the price of oil be higher than the cost of drilling the savings from the preference does not go to the consumer, but the oil drilling entrepreneur.

Is it important for the nation to be energy independent at the expense of lost tax revenues that flow to well-off energy companies and individual investors? Congress has consistently answered yes. Is it important at the expense of lost tax revenues to insure among

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[1] "Statement of Policy on Minority Ownership of Broadcasting Facilities," 68 FCC 2d 979 (1978).

The Supreme Court upheld the preference in *Metro Broadcasting* v. *FCC*, 497 U.S. 547 (1990). The Court looked at the Congressional action and came to the conclusion that Congress was very clear about support for the program.

[2] "Statement of Policy on Minority Ownership of CATV Systems," 52 R.R. 2d 1452 (1982), See also, "Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting," 92 FCC 2d 849 (1982).

the scarce airwaves that there be representation of as many of America's diverse communities. We believe the answer is also yes.

There is concern about agency other than the Internal Revenue Service deciding who gets a tax preference. There are several provisions in the code that cede authority to define preferences to an agency other than the IRS. For example, the code clearly allows a taxpayer to take a credit for the rehabilitation of a property listed on the national register of historic sights. However, it is the Department of the Interior that sets the regulations and decides whether a property is on the historic register and, therefore, eligible for an historic rehabilitation credit.

Why is there a need for a tax preference to encourage minority ownership of broadcast properties. Congress has been quite clear that it wants to provide tax relief in order that where the FCC found it:

> * * * necessary or appropriate to effectuate a change in policy of, or the adoption of a new policy of the Commission with respect to ownership and control of radio broadcasting stations (radio being used generically to apply to TV and cable as well). IRC § 1071.

There was considerable testimony given at the hearings of the Subcommittee on Oversight indicating that without the preference it was difficult, if not impossible for minorities to secure broadcast properties.

Percy Sutton testified he worked for seven years looking for financing and the opportunity to buy his first station, WLIB. This station satisfied a market previously unrecognized in New York—African-American talk radio.

Raul Alercon testified that his family fled from Cuba after losing their radio stations to Castro. They were determined to start again in America. They used the preference and began a chain of Spanish language radio stations that includes the fifth most popular FM station in the New York market. Prior to the Alercon family's investment no one in the radio business thought of the potential profit in serving the large Hispanic market in New York. There was no Spanish language FM station in New York even though there was money to be made until the preference made it possible for the Alercon Family to start their station.

There is evidence that minorities often do not get a break on the price of broadcast properties because of the preference. That is not the issue. The problem was never price. The majority of transactions involve entrepreneurs who have struggled to enter the broadcast business. They have always been willing to pay market prices. The average radio transaction has about $3.5 million, television transaction about $38 million. The issue has always been access to a closed society of broadcast entrepreneurs. The Subcommittee heard several witnesses indicate until this preference was established those who sold and brokered radio and TV stations would not open their doors to minorities. Now with the preference minorities are noticed in the market place.

The Subcommittee heard evidence that there were abuses with the use of the preference. There are many including minority broadcasters who believe the FCC should be allowed to make

changes to improve the program.[3] They believe that reforms that will insure the goal of diversity are truly achieved are in order.

Though the average holding period has been five years, and over 100 licenses transferred to minorities over the sixteen years the preference has been in effect are still in the same hands. There have been transactions where the minority sold out within a year. A longer holding period may be in order.

Most transactions involve true minority ownership and control. However, there have been transactions where the minority's interest in the profits and equity of the property was not truly in conformity with the FCC rules. Rules to better define ownership and control are in order.

Some of the properties held by minorities have not resulted in diversity of format or opportunities for minorities to work in broadcasting. Consideration should be given to requiring intentions to provide diversity and opportunity.

We are concerned about the retroactive features of the bill reported by the Committee. They go significantly beyond any retroactive features of recent legislation in that they are clearly designed to "rifle shot" at one particular transaction. It is not in the nature of this House to pass legislation that is retroactively directed at one taxpayer involved a particular transaction. This House has in recent years become reluctant to pass any legislation that is a "rifle shot" directed in favor of any taxpayer. It should be as reluctant to pass such legislation designed to deny a tax preference.

The bill was introduced on February 6, 1995, yet the amendments made by section 2 apply to sales and transactions on or after January 17, 1995. The Chair of the Committee and the sponsor of the bill justifies this effective date by citing the press release from the Committee of January 17, 1995, announcing a review of section 1071 and the hearing of the Subcommittee on Oversight on January 27, 1995, quoting the Chair, "Any changes to section 1071 may apply to transactions completed, or certificates issued by the FCC, on or after today, January 17, 1995."

There is no question what the intention of the Chair is in including the January 17, 1995 effective date in this legislation. It clearly is to stop section 1071 from applying to the largest transaction even benefiting by section 1071. The Chair was aware as of January 17, as many who read the business press, that the Viacom Company had recently announced an intention to enter into an agreement to sell its cable television systems for approximately $2.3 billion to a partnership of Mitgo Corp., a company wholly owned by Frank Washington, an African American, and affiliates of InterMedia Partners. The agreement was signed on January 20, 1995, and is contingent upon the FCC granting the certificates necessary for claiming the benefits of section 1071.

While there may be other transactions pending as of this date, there was no evidence of these transactions presented to the Committee.

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[3] Congress has barred the FCC from changing its rules implementing the preference. Pub. L. No. 100–202. 101 Stat. 1329.

There is no question that this retroactive effective date is directed as one earnest African American businessman. This man has built a successful cable business. He intends to increase its size to achieve economies of scale to effectively complete in what other committees of this House have found to be an extraordinarily dynamic and competitive business. But, despite his entrepreneurial efforts well within the law, the majority of the Committee has decided that he has become too successful.

We are concerned that the message of this legislation to minorities in this nation is that when you become too successful it will not matter whether you played by the rules—you will be allowed to go so far.

We are concerned that the way this legislation is directed at the Viacom deal it is unlikely that the revenue estimates of the Joint Committee on Taxation can be sustained.

A significant part of the revenue anticipated from the repeal of section 1071 is assumed to be the revenue lost from the Viacom transaction. A revenue estimate assumes a baseline of activities that will be altered by the legislation in question. How can the baseline include the Viacom transaction when it has become moot. If the legislation is enacted as reported, then there is no contract between Viacom and the Mitgo Corp.-InterMedia Partners partnership. The agreement was contingent upon securing the FCC certificate for section 1071 treatment. It is rank speculation to assume in the baseline what Viacom will do if the agreement is voided. There is also no evidence of what tax impact will be on Viacom or any other taxpayer who might purchase the cable properties. The facts are clear that most transfers of cable properties are done through some tax deferred arrangement. In fact, it was reported in the Wall Street Journal on the morning of the day this bill was reported that Time Warner was purchasing cable properties from Cablevision in a transaction that it intended to be a tax free or deferred reorganization.[4]

C.B. RANGEL.
HAROLD E. FORD.

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[4] Wall Street Journal, February 8, 1995 at A3.